

**THE CHANCERY COURT FOR LEWIS COUNTY  
AT HOHENWALD, TENNESSEE**

IN RE:

SENTINEL COMPANY

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NO. 4781

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**MOTION BY COMMISSIONER-IN-POSSESSION AND SENTINEL RECEIVER FOR  
THE COURT TO ALTER OR AMEND OR TO OTHERWISE RECONSIDER ITS  
ORDER SETTING AN EVIDENTIARY HEARING  
AND ALLOWING INTERIM DISCOVERY**

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**I. INTRODUCTION**

This case is a statutory receivership action commenced on May 18, 2004 by the Commissioner of the Tennessee Department of Financial Institutions pursuant to T.C.A. § 45-2-1501, *et seq.* On that date, the Commissioner took possession of Sentinel Trust Company ("Sentinel"). One month later, on June 18, 2004, a Notice of Insolvency, finding Sentinel insolvent, was filed. The primary focus of the receivership action is to address the liquidation of Sentinel, to address the claims against the Sentinel estate, and to pursue and collect assets of the Sentinel estate for the benefit of its claimants.

On February 28, 2005, numerous motions necessary to the ongoing operations of the Sentinel receivership were presented to the Court. The Court, however, decided not to rule upon three motions filed by the Receiver which sought approval of a distribution of proceeds from collateral that had been sold in three separate defaulted bond issues.<sup>1</sup> The Court also decided not

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<sup>1</sup> The three separate defaulted bond issues are the City of Fort Pierce, Florida First Mortgage Revenue Bonds, Series 1999 ("Fort Pierce"), the Hernando County, Florida First Mortgage Revenue Bonds, Series 1998A/1998B/1998C ("Hernando") and the Tarrant County, Texas Health Facilities Development Corporation Hospital Bonds ("Tarrant").

to rule upon a motion filed by the Receiver which sought approval of fees incurred by the Sentinel receivership, including outside counsel fees. Instead, the Court decided that an evidentiary hearing should be held on June 9, 2005 to address the objections lodged as to those four motions by Danny Bates and other former officers and directors of Sentinel (hereinafter “the Bates”) and that discovery would be allowed in the interim on the matters raised by those objections. An actual order deferring ruling on the referenced motions and setting the June 9, 2005 hearing has not been entered by the Court.<sup>2</sup> However, attached as **Exhibit 1** is the transcript of the February 28, 2005 hearing wherein the Court’s rulings are contained.

In this case, respectfully, the Court overlooked various matters before it in the record and otherwise admitted to by the Bates which indicate that the objections made by the Bates have been waived and do not warrant discovery or an evidentiary hearing. Indeed, the objections lodged by the Bates can and should be dealt with as a matter of legal decision: 1) are default administration fees, termination fees, fiduciary fees and interest expense fees accrued in relation to the Fort Pierce, Hernando and Tarrant defaults Sentinel fees payable to the Sentinel receivership or are they fiduciary assets and 2) are interest expense charges accrued after the May 18, 2004 institution of the receivership Sentinel fees payable to the Sentinel receivership or are they fiduciary assets as well? Because these matters do not warrant discovery or an evidentiary hearing, the Court should exercise its discretion and reconsider its recent ruling. Moreover the Court should reconsider these matters and grant the Receiver’s motions.

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<sup>2</sup> Counsel to the Bates has submitted a proposed order and counsel for the Receiver has submitted a competing proposed order.

## **II. APPLICABLE LEGAL STANDARD ON REQUEST TO ALTER, AMEND OR RECONSIDER RULING**

Until the time that an order of court becomes final, it remains within the Court's control and discretion to modify or amend. Hoalcraft v. Smithson, 19 S.W.3d 822, 827 (Tenn. App. 1999). An order of court should be reconsidered, modified or amended if to do such would avoid a clear error of law or to prevent injustice. See Bradley v. McLeod, 984 S.W.2d 929, 933 (Tenn. App. 1998). And, while a motion to alter or amend an order of court is not to be employed simply to request re-litigation of matters already adjudicated, nevertheless, such a motion is designed to allow the trial court the ability to correct any errors as to the law or the facts of a case that may have arisen as a result of the court overlooking or failing to consider certain matters. Chadwell v. Knox County, 980 S.W.2d 378, 383 (Tenn. App. 1998); see also Waste Management Inc. of Tennessee v. South Central Bell Telephone Company, 15 S.W.3d 425, 429 (Tenn. App. 1997) (trial court may change its mind after reconsidering the proof and applicable law).

## **III. FACTUAL BACKGROUND**

Sentinel served as trustee and/or paying agent to numerous municipal bond issues, many of which were relatively high risk private activity municipal bond issues which were dependent upon the revenues of the private activity (e.g., nursing home) to fund the scheduled principal and interest payments on the bond. Amounts deposited with Sentinel by the bond issuer or borrower, for the purpose of funding the scheduled principal and interest payments, were deposited into a pooled fiduciary account in Sentinel's name at SunTrust Bank ("Pooled Fiduciary Account"). Over the course of time, many of the private activity bond issues went into default. When that would happen, Sentinel would take efforts to secure and realize upon the defaulted bond's collateral. Once Sentinel exhausted the funds shown as being on deposit in the Pooled Fiduciary

Account for the particular bond issue that had fallen into default, they would use funds deposited into the Pooled Fiduciary Account by other, non-related bond issuers or borrowers to sustain the efforts to pursue and realize upon defaulted bond collateral. The Bates have asserted that the amounts taken from the Pooled Fiduciary Account to fund the default efforts did not include amounts to pay for Sentinel's default administration fees, fiduciary fees, termination fees or interest expense fees; rather, and according to the Bates, those fees were accrued over the timeframe of the default and paid when funds became available from the collateral proceeds for the defaulted bonds.

Over the course of time, the actions of taking funds from the Pooled Fiduciary Account resulted in a significant, multi-million dollar shortfall in that account. In no small part, it was the use of funds deposited into the Pooled Fiduciary Account to pursue recovery on the collateral of non-related default bond issues that led to the insolvency of Sentinel and the necessity of the Commissioner taking possession of that entity.

In addition to the funds withdrawn by the Bates from the Pooled Fiduciary Account to pursue defaulted bonds, Sentinel would accrue or assess fees and expenses in relation to each defaulted bond issue over the history of the default. Amongst those fees were default administration fees, termination fees and fiduciary fees that were accrued or assessed as due and owing to Sentinel. Also, in relation to each defaulted bond issue, interest was charged, as due and owing to Sentinel, on the amounts taken from the Pooled Fiduciary Account and on the amounts of accrued fees booked as owed to Sentinel. That interest was charged at 1.5% per month. That interest expense was always shown, in its entirety, as a fee payable to Sentinel.

All of the fees were charged or assessed pursuant to the fee schedules published by Sentinel. Attached as **Exhibit 2** are the various fee schedules reflecting the fees and charges that

the Receiver maintains are fees payable to Sentinel (i.e., payable to the Sentinel receivership) and to which the Bates have objected saying they are fees to be paid to the Pooled Fiduciary Account (i.e., are fiduciary assets). Included in these fee schedules are all of the fees at issue in the Bates' objections: default administration fees, fiduciary fees, termination fees and interest expense fees. Of particular importance as to whether these fees are "fiduciary assets" or are fees payable to Sentinel (and, thus, the Sentinel receivership) is the following language contained in the fee schedules and as highlighted on **Exhibit 2**:

Sentinel's fee quotations are not a commitment to perform services at these rates for the life of the bond issue. We reserve the right to adjust our rates of compensation from time to time, without notice.

**Exhibit 2**, highlighted portions (emphasis added). Nothing in the Sentinel fee schedules indicates that the fees accrued on default bonds would be "fiduciary assets." Indeed, the fee schedules clearly show the fees at issue to be payable to Sentinel and, thus, payable to the Sentinel receivership.

When collateral on a default bond issue was realized and available for distribution, the fees and expenses that had been accrued as owing to Sentinel were credited and/or paid by the Bates to Sentinel. The amounts that had been taken from the Pooled Fiduciary Account and spent toward recovery on the collateral were paid back to the Pooled Fiduciary Account. The remaining amounts, after these payments, would be distributed to the bondholders of the defaulted bond issue.

In early July 2004, shortly after the May 18, 2004 institution of the Sentinel receivership, the Receiver filed a motion seeking permission to use funds in the Pooled Fiduciary Account to meet the expenses of the Sentinel receivership. See Exhibit 3 attached. It was initially determined that the fees being generated through the services provided by the Sentinel receivership as paying agent to the non-defaulted bond issues were not going to be sufficient to

address the expenses of the receivership and outside counsel.<sup>3</sup> Objections to that motion were filed by the Bates and others, the basic thrust of the objections being that the funds in the Pooled Fiduciary Account were fiduciary funds, not Sentinel corporate funds, and, thus, were not subject to being used to pay for receivership expenses, including counsel fees incurred in relation to the numerous default bond issues that were still pending at the time of institution of the Sentinel receivership. At the hearing of that motion on July 12, 2004, counsel for the Receiver announced that a recovery on collateral from a defaulted bond issue<sup>4</sup> had just occurred, and that if the Court approved the payment to the Sentinel receivership of the Sentinel fees that had been accrued/assessed as to that default, then there was no need, at that time, to request permission to use funds from the Pooled Fiduciary Account. Moreover, at the July 12, 2004 hearing, it was clear that the Receiver was requesting approval of the payment of receivership expenses from the fees that had been charged in the normal course on the defaulted bonds as the collateral proceeds from the various defaulted bonds were realized over the course of the receivership. As reflected in the transcript of that July 12, 2004 hearing:

MR. MATHERNE: . . . we ask that the [receivership] fees [and expenses] that we are incurring and going forward be paid first from that amount [i.e., the Sentinel fees from the Washington County, Mississippi default recovery] and then from other Sentinel fees received from future default bond matters that are in the pipeline and that we anticipate bringing to fruition over the next 60, 90, 120 days, going forward.<sup>5</sup>

Your Honor, I do not think that there would be any argument or position taken but what those fees taken and realized from the bringing in of defaulted

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<sup>3</sup> The outside counsel fees included all of the counsel fees the Receiver was incurring from the defaulted bond matters which, of course, prior to the receivership the Bates were paying through use of Pooled Fiduciary Account funds.

<sup>4</sup> That particular default bond issue was the Washington County, Mississippi bond issue which is discussed further in this filing.

<sup>5</sup> These default bond recoveries that were to occur in the future included the recoveries on the Fort Pierce, the Hernando and the Tarrant defaulted bonds.

bond recovery efforts are assets of the receivership estate, or assets of the Sentinel receivership.

JUDGE DAVIES: That would've been the fees that would have been charged in the ordinary course of Sentinel's operation, right?

MR. MATHERNE: Those were fees that were charged in the ordinary course as it related to a default bond issue.

July 12, 2004 Hearing Transcript at p. 5 (relevant portions attached as **Exhibit 4**)<sup>6</sup> (brackets and footnote added for clarity). Clearly, the fees and expenses that were charged by Sentinel in the ordinary course relating to default bond issues (as reflected by Sentinel's own fee schedules -- see Exhibit 2) included the default administration fees, the termination fees, the fiduciary fees and the interest expense fees -- i.e., the exact fees to which the Bates now object to being paid to Sentinel.

Resulting from the July 12, 2004 hearing, an order, which was approved for entry by the Commissioner-in-Possession's counsel, the Receiver's counsel and the Bates' counsel, was entered by this Court on July 19, 2004 which held:

Pursuant to T.C.A. § 45-2-1502(f),<sup>7</sup> the Court approves payment of Sentinel receivership expenses from recovery of Sentinel fees arising from recoveries on default bond issues and from Sentinel fees arising from processing bond payments. (emphasis and footnote added).

See Exhibit 5 hereto.

As is clear from the July 12, 2004 hearing, the "Sentinel fees" set forth in the Court's July 19, 2004 order included all of the charges against the default bond issue except the amount that had been taken from the Pooled Fiduciary Account --

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<sup>6</sup> It is the Receiver's understanding that counsel for the Bates filed the entire July 12, 2004 Hearing Transcript with the Clerk. Because its length is 100 pages and because the July 12<sup>th</sup> hearing addressed numerous motions, only the pertinent pages are attached as **Exhibit 4**.

<sup>7</sup> T.C.A. § 45-2-1502(f) states that "all necessary and reasonable expenses of the commissioner's possession of a state bank [or trust company] and of its reorganization or liquidation shall be defrayed from the assets thereof." (brackets added).

MS. THIMMIG: If we can just get some clarification on the additional monies that came in. And if the order is going to be specific so that if it is actually fees that have been earned by Sentinel that are being returned, we have no objection to the Receiver accessing those.

If, however, they're expenses that were advanced out of the pooled trust account, those expenses should, in fact, be reimbursed into the pooled trust account, which is exactly what the Receiver's motion originally said it was going to do.

So, I -- just for clarification --

JUDGE DAVIES: All right.

MS. THIMMIG: -- if we could have that.

JUDGE DAVIES: Should I -- is she saying anything that you disagree with?

MR. MATHERNE: No, Your Honor. I think that basically at each recovery there are going to be three components from a defaulted bond.

JUDGE DAVIES: All right.

MR. MATHERNE: One is going to be Sentinel fees to be paid. . . . That's the component we're asking access to for our receivership fees. The second component is going to be those other amounts advanced [from the Pooled Fiduciary Account] for other expenses which will be placed [back] into the pooled account.

And the third will be an excess of the other two, if there is an excess.

JUDGE DAVIES: And where will that go?

MR. MATHERNE: To the bond holders.

JUDGE DAVIES: To the bond holders. Okay. All right. Let's put that in the order then.

July 12, 2004 Hearing Transcript at pp. 22-23 (see Exhibit 4) (brackets added for clarity). As is apparent from the July 19, 2004 order (**Exhibit 5**), the verbiage above was not set forth, but what is clear from this portion of the transcript is that the "Sentinel fees" referenced in that July 19, 2004 order include all of the fees and expense items that the Bates object to having paid to the Sentinel receivership from the Fort Pierce, the Hernando and the Tarrant defaulted bonds.



Since the entry of the July 19, 2004 order, and under the authority of that order, the Sentinel Receiver has used the recovery of Sentinel fees that had been accrued on various default bond issues to pay for receivership expenses. These amounts so used included default administration fees, termination fees, fiduciary fees and interest expense fees accrued by Sentinel on those defaulted bonds upon which recovery has been realized. These actions of the Receiver have been taken with notice to, the full knowledge of, and absence of objection from, the Bates. At no time has the Sentinel Receiver paid the costs of the receivership with Pooled Fiduciary Account funds. As noted in the July 19, 2004 order, that would only happen if allowed by subsequent order of this Court.

Since the July 19, 2004 order, but prior to the recent Fort Pierce, Hernando and Tarrant motions, two relevant instances have occurred wherein the Receiver has moved the Court to approve the distribution of the proceeds of the collateral from defaulted bond issues.<sup>8</sup> In both instances, permission to pay accrued fees to the Sentinel receivership was sought, and, in both instances, the Court entered orders allowing the payment from the particular default bond collateral proceeds. In both instances, it was made clear in the motions, and the exhibits presented with the motions, that what was being sought was approval of payment from default

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<sup>8</sup> Throughout this same timeframe, the Receiver was proceeding with the orderly liquidation of the company, including the transferring of fiduciary positions held by Sentinel. This Court entered orders dated November 15, 2004 and December 1, 2004 which effected the transfer of fiduciary positions to four different financial institutions. Those orders were certified as final by the Court under Rule 54.02 Tenn.R.Civ.P., and the Bates have appealed those Rule 54.02 final orders on the narrow basis of whether approval of the transfer of the fiduciary positions was something upon which the Court had authority to rule under T.C.A. § 45-2-1501, *et seq.* The Bates have never sought a stay of the proceedings, and, pursuant to Rule 62 Tenn.R.Civ.P., the receivership may proceed and this Court can grant relief in relation to the receivership even when an appeal is being taken from a decision in the receivership proceedings. The appeal that is pending, however, has nothing to do with the Fort Pierce, Hernando or Tarrant motions, and any effort by the Bates to suggest otherwise would be disingenuous.

recoveries to the Sentinel receivership of Sentinel's accrued default administration fees, termination fees, fiduciary fees and interest expense fees.

These two instances were 1) the Lee County, Alabama defaulted bond issue and 2) the Washington County, Mississippi defaulted bond issue. Attached as **Exhibit 6** is the Receiver's Motion for Approval of Final Distribution regarding the Lee County, Alabama defaulted bond issue. In that motion, the Receiver specifically requested permission to have the pre- May 18, 2004 and post- May 18, 2004 default administration fees, termination fees, fiduciary fees and interest expense fees paid to the Sentinel receivership from the collateral proceeds of the Lee County, Alabama bond issue. See Exhibit A to the Lee County motion. In so requesting, the Receiver was asserting that those Sentinel fees were owed to Sentinel, were not "fiduciary assets" owed to the Pooled Fiduciary Account and were subject to the Court's earlier July 19, 2004 order. In that same motion, the Receiver sought to have all of the funds that had been taken from the Pooled Fiduciary Account in the Lee County, Alabama default paid back to that account and to have the remainder paid pro rata to the bondholders of the defaulted Lee County bond issue. No objection or opposition was filed to the Receiver's Lee County Motion (by the Bates or anyone else), and this Court entered an order on December 15, 2004 (see **Exhibit 7**) approving the Receiver's proposed distribution, including the payment of all of the pre- May 18, 2004 and post- May 18, 2004 accrued Sentinel fees to the Sentinel receivership.

Attached as **Exhibit 8** is the Receiver's Motion for Approval of Distribution of Funds regarding the Washington County, Mississippi defaulted bond issue. In the Washington County matter, the proceeds from the collateral paid to Sentinel was less than the amount of accrued Sentinel fees (e.g., default administration fees, fiduciary fees and interest expense charges). The Receiver asserted that the Sentinel fees should be paid to the Sentinel receivership first, even

though there would be nothing left over to pay back the amounts the Bates had taken from the Pooled Fiduciary Account on the Washington County default. In so requesting, the Sentinel Receiver was asserting that the accrued Sentinel fees were owed to Sentinel, were not “fiduciary assets” owed to the Pooled Fiduciary Account, were subject to the Court’s July 19, 2004 order and were to be paid before any amounts owed to the Pooled Fiduciary Account were to be paid. No objection or opposition was filed to the Receiver’s Washington County motion (by the Bates or anyone else), and this Court entered an order on December 15, 2004 (see Exhibit 9) approving the Receiver’s proposed distribution which had all of the collateral proceeds being used to pay the Sentinel fees.<sup>9</sup>

Coming from the Court’s July 19, 2004 order and the Lee County and Washington County orders (**Exhibits 5, 7 and 9**), it was clearly established that 1) it was appropriate to pay Sentinel fees that had been accrued on defaulted bond matters to the Sentinel receivership to defray the costs and expenses of the receivership (see T.C.A. § 45-2-1502(f)) and 2) the Sentinel fees accrued in relation to the defaulted bond issues included the exact Sentinel fees (i.e., default administration fees, termination fees, fiduciary fees and interest expense fees) to which the Bates now object.

Throughout the Sentinel receivership, monthly fee approval motions have been filed by the Sentinel Receiver seeking approval of the fees incurred by the Receiver, outside counsel and others working for the Sentinel receivership. Orders from this Court have been entered approving the requested fees. See Collective Exhibit 10. To undersigned counsel’s recollection, the Bates have never filed or voiced objection to any of those fee approval motions until they did

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<sup>9</sup> As reflected in the Court’s order (**Exhibit 9**), the Court allowed payment of a discounted amount of pre- May 18, 2004 attorneys’ fees to the Waller Lansden firm prior to having the remainder paid to the Sentinel receivership.

so verbally at the February 28, 2005 hearing. And, again, coming from the Court's July 19, 2004 order, it is well understood that no Sentinel receivership fee or expense can be paid from a fiduciary asset -- and none has been.

At issue in this Motion to Alter or Amend/Reconsider is that the Court has refused to rule on four motions identical to those previously presented and ruled upon. Instead, the Court has set an evidentiary hearing and has allowed discovery in a context where no discovery or evidentiary hearing is needed and where the Bates are estopped from making or have otherwise waived the objections upon which the Court is allowing discovery and a hearing.

Three motions to which the Bates have objected were filed with the Court on February 17, 2005 requesting approval of the distribution of proceeds from the Fort Pierce, Hernando and Tarrant defaulted bonds. Attached as **Exhibits 11, 12 and 13** are copies of those motions. A comparison of those motions, and the exhibits to those motions, with the Lee County, Alabama motion and exhibits (**Exhibit 6**) and the Washington County, Mississippi motion and exhibits (**Exhibit 8**) clearly indicates that the Receiver was seeking in the Fort Pierce, Hernando and Tarrant motions only that which had already been allowed (and not objected to) in the Lee County and Washington County contexts. At the February 28, 2005 hearing on the Fort Pierce, Hernando and Tarrant motions, reference was made by the Receiver's counsel to the rulings made previously on identical motions, but the Court overlooked that and proceeded to set an evidentiary hearing. February 28, 2005 Hearing Transcript at pp. 20-21 (attached as **Exhibit 1**). The Court, therefore, should reconsider this aspect of its order.

The fourth motion to which the Bates object and upon which the Court refused to rule was a motion, filed on February 17, 2005, seeking approval of the Receiver's fees and expenses,

including outside counsel's expenses. There was no written objection, but the Court, on February 28, 2005, treated the matter as follows:

MR. MATHERNE: Oh, Your Honor, there was one other motion that I was moving on and that's the motion for fees. There was not an objection lodged with that motion, or that I'm aware of.

MR. SCHWENDIMANN: We would ask that that be deferred, Your Honor, until the Court has had an opportunity to hear all of this.

JUDGE HARRIS: Okay.

MR. SCHWENDIMANN: Because again our contention is that they're taking monies from trust accounts.

MR. MATHERNE: Your Honor, that is so paper thin.

JUDGE HARRIS: Well, it won't hurt to hear it all together.

MR. MATHERNE: These are fees that are being expended that have already in relation to matters that have been done for a long time. And it's needed to keep going in regards to payment --

JUDGE HARRIS: Well, if he's objecting to it, I'm going to set it for hearing with the other.

MR. MATHERNE: All right, sir.

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COURT CLERK: We just went through all the dates. June 9<sup>th</sup> is open.

JUDGE HARRIS: June the 9<sup>th</sup>.

MR. MATHERNE: Your Honor, am I to understand that no other fee application is going to be ruled upon until after this hearing?

JUDGE HARRIS: No other fee?

MR. MATHERNE: No other fee application. Fee application for approval of fees because that is one of the powers that this Court has under the statute.

And I was wondering if that's going to be -- you had mentioned that you would not do that in light of the statement of counsel that we're paying ourselves with trust funds. And I'm just concerned as to whether that means that --

JUDGE HARRIS: Well, as long as there's an objection to it, we're going to resolve all that on June the 9<sup>th</sup>.

Transcript of February 28, 2005 Hearing (attached as **Exhibit 1**) at pp. 22-23 and 34-35. Respectfully, the Court overlooked that under the July 19, 2004 order of this Court (**Exhibit 5**), receivership fees and expenses were not to be paid from the "trust account" -- i.e., the Pooled Fiduciary Account. Therefore, the Court must have overlooked this aspect when it determined that the Bates' speculative objection (i.e., "they're taking monies from trust accounts") warranted discovery and an evidentiary hearing. The Court should reconsider this aspect of its order.

#### **IV. ARGUMENT**

In order to fully examine why the Court's order should be reconsidered and amended, the nature and extent of the objections lodged by the Bates must be examined.

Attached as **Exhibit 14** are the objections filed by the Bates concerning the distribution of funds realized on the Fort Pierce, Hernando and Tarrant default bond issues. The objections focus on only two issues. First, the Bates maintain that the entirety of what is accrued and/or "overdrafted" on each default bond issue should be paid to the Pooled Fiduciary Account rather than having the amount that was withdrawn from the Pooled Fiduciary Account paid back to that account and the amounts noted as fees and expenses to Sentinel paid to the Sentinel receivership. Second, the Bates maintain that the interest expense charged post- May 18, 2004 at 1.5% per month on amounts accrued or "overdrafted" on the particular defaulted bond issue is not an amount owed and payable to Sentinel as a Sentinel fee, but, rather, it is an amount that should be paid to the Pooled Fiduciary Account. See Exhibit 14 at ¶¶ 3 and 4.

A review of the transcript of the February 28, 2005 hearing reveals that the argument of the Bates' counsel bore little resemblance to the objections they had filed with the Court. See Exhibit 1. Indeed, the arguments of the Bates' counsel were inflammatory, misleading and

accusatory diatribes concerning the Commissioner-in-Possession's and Receiver's alleged intentional conversion of or "hiding" of trust assets, inside deals regarding the transfer of Sentinel fiduciary positions and refusal to set a hearing under the Administrative Procedures Act, to mention just a few.<sup>10</sup> Receiver's counsel tried to articulate to the Court (who was having its first substantive exposure to the Sentinel case because of the Lewis County Chancery Court rotation) that there were really only two issues presented by the objections and that previous unopposed motions filed by the Receiver had requested, and previous rulings by the Court had ordered, the exact relief that was being sought.<sup>11</sup> But, with the Bates' counsel crying about unfair treatment and fraudulent conduct, the Court overlooked the actual substance of the motions and objections<sup>12</sup> and elected to set an evidentiary hearing on the objections.<sup>13</sup> What is clear, however, is that a close review of the objections reveals that no discovery or evidentiary hearing is warranted and that the Court should reconsider its recent order and grant the Receiver's motion to distribute funds on the Fort Pierce, Hernando and Tarrant defaults and motion for approval of fees.

a) **Bates' Objection Regarding Payment of Sentinel Fees Does Not Warrant Discovery or an Evidentiary Hearing and Should be Overruled in Favor of the Sentinel Receivership.**

A specific example of the Bates' first objection to the Fort Pierce, Hernando and Tarrant distributions is useful. In the Fort Pierce default context, the Receiver moved for \$130,468.89 to be paid back to the Pooled Fiduciary Account because that is the amount of funds shown to have

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<sup>10</sup> See February 28, 2005 Hearing Transcript (**Exhibit 1**) at pp. 10, 11, 13, 16 and 27.

<sup>11</sup> See February 28, 2005 Hearing Transcript (**Exhibit 1**) at p. 17-18, 20 and 21.

<sup>12</sup> It was apparent at the February 28, 2005 hearing that the Court had not had time to review the motions or the objections. See February 28, 2005 Hearing Transcript (**Exhibit 1**) at p. 6, lines 18-22.

<sup>13</sup> Receiver's counsel did state that at the hearing, "Your Honor, I don't think that there is a need for a hearing." **Exhibit 1** at p. 11.

been withdrawn from that account pre-receivership to fund the Fort Pierce default effort.<sup>14</sup> See Exhibit B to the Fort Pierce motion (said motion being attached as **Exhibit 11** hereto). The Receiver is also moving for the amount of \$172,747.17 to be paid to the Sentinel receivership because that is the aggregate amount of default administration fees, termination fees, fiduciary fees and interest expense fees that had been accrued pre- May 18, 2004 on the Fort Pierce default bond issue. Id. This \$172,747.17 was never withdrawn from the Pooled Fiduciary Account; rather, it is the amount of accrued pre- May 18, 2004 Sentinel fees shown as owing to Sentinel. In objection to this treatment -- which is the exact treatment given the distribution of Lee County proceeds and Washington County proceeds to which neither the Bates nor anyone else objected - - the Bates maintain that the entire \$303,216.06<sup>15</sup> should be paid to the Pooled Fiduciary Account.

Respectfully, the Bates' objection is not one that should give rise to limited discovery or an evidentiary hearing and, thus, upon reconsideration, the Court should not order such. Simply put, there is nothing different in the treatment of the Sentinel fees in the Fort Pierce, Hernando and Tarrant situations, than was the treatment of those fees as ordered in the Lee County and Washington County matters. The Bates are estopped from or have waived taking a position contrary to what they accepted and did not object to in the previous Lee County and Washington County distributions. The positions of the Receiver, as stated in its Lee County and Washington

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<sup>14</sup> No funds have been taken from the Pooled Fiduciary Account to pay for efforts on the Fort Pierce default after May 18, 2004. Rather, the Receiver has paid for those efforts from Sentinel corporate funds. The same is true regarding payment of post-receivership expenses and fees on all of the defaulted bonds.

<sup>15</sup> The \$303,216.06 amount is the one presented in the Receiver's motion (see Exhibit B to that motion, which is attached as **Exhibit 11** hereto) whereas the amount of \$305,209.87 is the amount presented in the Bates' Objections (see **Exhibit 14** hereto at ¶ 3). The difference stems from the Receiver's use of Sentinel's AccuTrust accounting system (which Mr. Bates has stated was the primary accounting system used for trust matters at Sentinel), and the Bates' use of an alternative, secondary accounting system at Sentinel -- the QuickBooks system. In this instance, the difference, which is \$1,999.81, is not material.



County motions (**Exhibits 6 and 8**) and the rulings of this Court (see Exhibits 7 and 9) on the issue of whether the default administration fees, the termination fees, the fiduciary fees and the interest expense fees are fees owed to Sentinel and, thus, payable to the Sentinel receivership as Sentinel fees, were presented and ruled upon without objection from the Bates. The exact issues, already decided by the Court in its Lee County and Washington County rulings, are the issues on which the Bates want to conduct discovery and have an evidentiary hearing. The precedential impact of, and the ability to rely upon, the Court's earlier rulings is at issue here. Respectfully, the Bates have waived their position to make the objections they currently make, and, thus, the Court should alter, through reconsideration, its recent order.

Moreover, the fallacy of the Bates' objection on this point is that the amounts that represent the accrued Sentinel fees (i.e., the \$172,747.17 amount in the Fort Pierce example) were never funds taken from the Pooled Fiduciary Account. Therefore, there is no justification to accede to the Bates' insistence for that amount to be placed into that account. It is no surprise that the Bates advocate placing the pre- May 18, 2004 Sentinel fees into the Pooled Fiduciary Account -- it reduces the multi-million dollar shortfall that developed in that account during the timeframe that they were in charge of Sentinel. And, it is no mystery as to why the Bates are now making the objection in an effort to get more money paid to reduce the Pooled Fiduciary Account shortfall -- they are aware that the Receiver is investigating their actions in relation to causing or otherwise being responsible for that shortfall.

But, the fact remains that the Sentinel fees, which the Bates are trying to have placed in the Pooled Fiduciary Account, are not fiduciary assets that belong to the stakeholders of the shortfall in that account. As has been noted to the Court throughout the history of this receivership and in various filings with the Court, while the Sentinel fees should be paid to the

Sentinel receivership to ensure that the pursuit of assets and the operations of the receivership can continue, to the extent that funds from Sentinel fees remain in the Sentinel estate at the closing of this receivership, those funds will be further distributed to the estate's claimants which are likely, in large part, to be claimants to the Pooled Fiduciary Account shortfall.

Furthermore, the very nature of the Sentinel fees charged and earned on the defaulted bonds indicates that they are not "fiduciary assets." A default administration fee is a charge by Sentinel for the specialized services provided by Sentinel to the defaulted bond issue and the workout of that default -- and, thus, is a fee earned by, and payable to, Sentinel. A termination fee is a charge levied by Sentinel upon defaulted bonds, similar to an early payoff penalty on a loan, which is owed to Sentinel because the termination of the bond causes a reduction in future revenue to the company. The fiduciary fee is the standard semi-annual fee charged by Sentinel for providing the trustee/paying agent services and is charged irrespective of whether or not the bond issue is in default. The interest expense fee is the fee charged by Sentinel for its carrying of the "borrower" position of the particular defaulted bond and is applied to the accrued fees owed to Sentinel and the overdraft vis-à-vis the Pooled Fiduciary Account. In essence, nothing about the nature of each Sentinel fee is "fiduciary." All consist of fees earned by and accrued as owing to Sentinel, the company. All were fees charged in the ordinary course of Sentinel's operations related to default bond issues<sup>16</sup> and, thus, are clearly "Sentinel fees arising from recoveries on defaulted bond issues" and, thus, are payable to the Sentinel receivership and can be used to defray the costs of the receivership. July 19, 2004 Court Order, **Exhibit 5** hereto. Certainly, the Sentinel fee schedules themselves (**Exhibit 2**) leave no doubt that the fees are earned by and payable as compensation to Sentinel and are not fiduciary assets that should be placed in the

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<sup>16</sup> See **Exhibit 4** at p. 5.

Pooled Fiduciary Account. See Exhibit 2 wherein the Bates, in the fee schedules, reserve the right to adjust those fees, which they characterized as “our rates of compensation.”

Moreover, the Bates’ present objection to the payment to the Receiver of the accrued Sentinel fees from the default bond proceeds is directly contradicted by an earlier sworn statement by Danny Bates. Interestingly, the affidavit that contains the admissions from Mr. Bates is attached to the Bates’ Objections to the Receiver’s Motions on Fort Pierce, Hernando and Tarrant. See Exhibit H (Affidavit of Danny N. Bates) which is attached to **Exhibit 14** to this Motion. As was noted earlier in this filing, in July 2004, the Receiver moved the Court for permission to use Pooled Fiduciary Account funds to pay receivership expenses. Part of the Receiver’s position in that motion was that the fees being paid at that time from the non-defaulted bond issues were not expected to be enough to cover receivership expenses (which included the expenses of outside counsel relating to the various default bond issues that existed at that time). As the Court knows, this matter was worked out and resulted in the July 19, 2004 order which held that, absent further order of this Court, the receivership expenses would not be paid out of the Pooled Fiduciary Account and that receivership expenses could be addressed with the accrued Sentinel fees paid from default bond recoveries. See Exhibit 5.

In relation to the issue of whether there were enough “fees” for the Sentinel receivership to operate on, Mr. Bates made his affidavit. He first identified \$73,437.50 in fees that he contended were Sentinel fees that could be used by the Sentinel receivership. He then stated in his affidavit:

5. The foregoing fees [i.e., the \$73,437.50] do not include overdraft charges at the rate of 1.5% per month on overdrafts in defaulted bond issues and do not include other, earned default administration charges and fees and termination fees, for which alone there should have been about \$35,712.50 in fees receivable. This means a total that should have actually been payable to Sentinel for June of the \$73,437.50 + \$35,712.50 less the \$16,312.50 in fees on the

overdraft status accounts which, though credited as receivable cannot be actually withdrawn due to the overdraft, thus totaling about \$92,837.50 in withdrawable fees. (brackets added for clarity).

Affidavit of Danny N. Bates at ¶ 5 (affidavit being attached to **Exhibit 14** to this filing). Clearly, Mr. Bates is stating, under oath, that fees which are “withdrawable” by Sentinel and the “total that should have actually been payable to Sentinel” “on the overdraft status accounts,” include earned default administration charges and fees and termination fees, as well as the 1.5% interest charge on the overdraft and other charges. The Bates should not be allowed, given this sworn admission by Danny Bates, to take the position that the exact fees referenced by Mr. Bates as being payable to Sentinel are now payable only to the Pooled Fiduciary Account.

Given the foregoing, the Commissioner-in-Possession and the Receiver respectfully assert that the Court overlooked these matters and should reconsider its recent order and grant the Fort Pierce, Hernando and Tarrant motions.<sup>17</sup>

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<sup>17</sup> In the text of this filing, the Fort Pierce default is reviewed as the example of working through what Sentinel fees are being objected to by the Bates. In the Hernando context, there was, according to the Receiver’s motion (see Exhibit 12), a total of \$743,211.52 to be deducted from the collateral proceeds -- that amount being broken down to \$444,747.29 owed back to the Pooled Fiduciary Account and \$298,464.23 owed to the Sentinel receivership for the accrued pre- May 18, 2004 Sentinel fees. According to the Bates’ objections (see Exhibit 14), the total amount that should be paid to the Pooled Fiduciary Account is \$739,558.12. Again, the difference as between the \$743,211.52 (in the Receiver’s motion) and the \$739,558.12 (in the Bates’ objections) is due to the Receiver’s use of Sentinel’s AccuTrust accounting system and the Bates’ use of Sentinel’s QuickBooks system. The difference between the two amounts, however, is only \$3,653.40, is not material and certainly would not justify the time and expense of discovery and/or an evidentiary hearing. With regard to the Tarrant default, there was, according to the Receiver’s motion (see Exhibit 13) a total of \$605,312.83 to be deducted from the collateral proceeds -- that amount being broken down to \$390,806.52 owed back to the Pooled Fiduciary Account and \$214,506.31 owed to the Sentinel receivership for the accrued pre- May 18, 2004 Sentinel fees. According to the Bates’ objections (see Exhibit 14), the total that should be paid to the Pooled Fiduciary Account is \$871,480.98. The difference as between the totals (i.e., the Receiver’s \$605,312.82 and the Bates’ \$871,480.98) is a function of the Receiver’s use of Sentinel’s AccuTrust system and the Bates’ use of Sentinel’s QuickBooks system. More specifically, the difference between the two figures is attributable to two matters. First, the QuickBooks system has added to the total amount an invoice of \$265,145.10 and an invoice of \$1,423.05 which are not recorded on the AccuTrust system. Second, the Bates’ numbers also included additional interest accrued on that approximately \$266,000.00 amount that are not shown in the AccuTrust system. Neither the Commissioner-in-Possession nor the Receiver has been able to verify the substance of the approximately \$266,000.00 of additional “overdrafts,” Moreover, Mr. Bates has confirmed that the AccuTrust system was the primary Sentinel trust department accounting system and, thus, is assumed to be the most complete and accurate. See Exhibit 15, September 10, 2003 memo from Danny Bates to Vivian Lamb, highlighted portions. But, even to the extent that this approximately \$266,000.00 difference is seen as disputed, such does not justify the time and expense of discovery and an evidentiary hearing on the difference. Rather, on reconsideration,

b) **Bates' Objection Regarding Payment of Post- May 18, 2004 Interest Expense to Sentinel as a Sentinel Fee Does Not Warrant Discovery or an Evidentiary Hearing and Should be Overruled in Favor of the Sentinel Receivership.**

It appears that the Bates' second objection to the Fort Pierce, Hernando and Tarrant motions is that the interest expense fees noted as being payable to the Sentinel receivership, post-May 18, 2004 (i.e., post-receivership), should be paid to the Pooled Fiduciary Account. Again, using the Fort Pierce default as the example, the Receiver has moved the Court to allow \$34,017.27 of post- May 18, 2004 interest expense to be paid to the Sentinel receivership from the Fort Pierce collateral proceeds. See Exhibit B attached to the Fort Pierce motion (which is attached hereto as **Exhibit 11**). Please note that in their objections, the Bates compute the post-May 18, 2004 interest on Fort Pierce to be \$38,605.77. See **Exhibit 14** at ¶ 3. Again, this difference is the result of the Receiver using Sentinel's AccuTrust system and the Bates using Sentinel's QuickBooks system. As noted earlier, Mr. Bates has admitted numerous times that the AccuTrust system was the official accounting system of Sentinel's trust department (see **Exhibit 15**, highlighted portions) and, thus, the Receiver asserts that the AccuTrust numbers are more reliable and should be used consistently. But, even if there must be some dispute as between the use of AccuTrust v. QuickBooks, certainly the difference of \$4,588.50 is not a material amount and does not warrant discovery and an evidentiary hearing.<sup>18</sup>

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the Court could simply instruct the Commissioner-in-Possession/Receiver and the Bates to submit their positions with whatever evidence they have in relation to the inclusion, exclusion and/or treatment of the approximately \$266,000.00 amount in the Tarrant default matter. The Court could then decide whether to include it or exclude it and/or how to treat it with regard to the distribution of the Tarrant County collateral proceeds.

<sup>18</sup> Similar issues exist regarding the Hernando and Tarrant defaults. Regarding the Hernando motion, using AccuTrust, the post- May 18, 2004 interest expense calculated by the Receiver is \$94,594.78. See Exhibit B to the Hernando motion (which is **Exhibit 12**). The Bates, using QuickBooks, calculate that post- May 18, 2004 interest expense to be \$93,549.95 (see **Exhibit 14** at ¶ 3). Certainly, the \$1,044.83 difference is non-material and does not justify allowing discovery and setting an evidentiary hearing. In the Tarrant motion, the Receiver, using AccuTrust (which did not have the additional approximately \$266,000.00 that is found in QuickBooks), computed the post-May 18, 2004 interest expense fee as \$47,385.94. See Exhibit B to Tarrant motion (which is **Exhibit 13**). Whereas, the Bates, using QuickBooks, calculated the post- May 18, 2004 interest expense fee as \$110,262.90 (see **Exhibit 14**

What is in dispute is the legal determination as to whether an amount resulting from an interest expense, being charged as against an amount borrowed from the Pooled Fiduciary Account and various amounts of accrued Sentinel fees, is owed back to the Pooled Fiduciary Account or whether it is payable to the Sentinel receivership.

On this issue, Mr. Bates, in his sworn Affidavit, has already admitted that the 1.5% per month interest charged on overdrafts in defaulted bond issues was a fee that could be withdrawn or paid to Sentinel as a Sentinel fee. See Affidavit of Danny N. Bates at ¶ 5, which is attached to the Bates' Opposition -- which is **Exhibit 14** to this motion. With that being Mr. Bates' sworn position, he should be considered as having waived the objection he now lodges in asserting that the interest expenses must be paid to the Pooled Fiduciary Account.

Additionally, the Sentinel fee schedules themselves (**Exhibit 2**) specifically include the 1.5% per month interest charge as a "Miscellaneous" fee which they further describe as being part of "our" (i.e., Sentinel's) "compensation."

Finally, the past treatment of this exact issue, and the precedent established through motions such as the Lee County motion, establish that the interest earned/accrued post- May 18, 2004 is a Sentinel fee payable to the Sentinel receivership from the proceeds of the defaulted bond's collateral. See Exhibits 6 and 7. This precedent was established with full notice being given to and no objection being raised by the Bates.

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at ¶ 3). The differences in these two numbers, to the Receiver's understanding, arise from two sources: 1) the Bates, by using QuickBooks, have applied interest upon approximately \$266,000.00 more than the Receiver and 2) the Bates have applied interest through December 2004, whereas the Receiver only applied interest through the end of September 2004 when the Tarrant collateral proceeds were transferred to it. The Receiver stands by the correctness of its calculations regarding the Tarrant post- May 18, 2004 interest charge -- AccuTrust is the appropriate system to use, and interest should not have been charged past the late September 2004 date -- but, even if these computational matters are in dispute, that dispute would not justify conducting discovery and having an evidentiary hearing. Rather, the Receiver asserts that that type of dispute would warrant this Court instructing the Receiver and the Bates to submit their respective positions on the calculations. Then the Court could decide what calculation to accept based upon those submissions.

Accordingly, the Commissioner-in-Possession and Receiver assert that the Court order allowing discovery and an evidentiary hearing on this objection was a decision made due to its overlooking the matters pointed out herein -- matters which undersigned counsel attempted to raise at the February 28<sup>th</sup> hearing.<sup>19</sup> Therefore, the Court should reconsider this matter and alter its recent order to dispense with the discovery and the evidentiary hearing and rule upon this issue in favor of the Sentinel receivership being able to receive, as fees, the post- May 18, 2004 interest expenses on the Fort Pierce, Hernando and Tarrant defaults.

c) **Bates' Objection Regarding Approval of Receiver's Fees and Outside Counsel Fees Does Not Warrant Discovery or an Evidentiary Hearing and Should Be Overruled in Favor of the Sentinel Receivership.**

As noted earlier, the Bates filed no written objection to the Receiver's February 17, 2005 Motion for Approval of Receiver, Outside Counsel and Third-Party Contractors Fees. Rather, at the February 28, 2005 hearing, the Bates' counsel objected to approval of the fees "because again our contention is that they're taking monies from trust accounts." **Exhibit 1** at p. 22. Based upon that objection, the Court decided not to rule on the fee approval motion and to set the Bates' "objection" for hearing on June 9, 2005, along with the objections to the Fort Pierce, Hernando and Tarrant motions.

Let there be no doubt, the Receiver has paid no fees or expenses from what it thought or knew to be fiduciary assets. That has been the case both prior to and since the Court's July 19, 2004 order (**Exhibit 5**). Moreover, the Bates have never objected to any of the monthly fee approval motions that have been presented to the Court by the Receiver starting back in July 2004 and occurring monthly since. Their present objection to the motion to approve fees has nothing to do with the Receiver paying fees from the Pooled Fiduciary Account, because that has

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<sup>19</sup> See **Exhibit 1** at pp. 11, 17-18, 20 and 21.

not happened and, under the July 19, 2004 order, will not happen absent further order of this Court. Rather, this objection has everything to do with the Bates attempting to deprive the Sentinel receivership of funds to investigate the causes of the insolvency and the location of assets.

Again, however, the objection does not warrant discovery or an evidentiary hearing. From the Bates' verbal objection and from the February 28, 2005 transcript (**Exhibit 1**) as a whole, one can glean that the Bates believe that the Sentinel fees, that the Receiver asserts are payable to the Sentinel receivership from the Fort Pierce, Hernando and Tarrant bond issues, are fiduciary assets owed to the Pooled Fiduciary Account and, thus, cannot be used to pay the fees. Respectfully, it is a matter of legal determination as to whether or not those pre- May 18, 2004 default administration fees, fiduciary fees, termination fees and interest expense fees are fiduciary fees. The Court can determine that without an evidentiary hearing. If those fees are found to be fiduciary assets, pursuant to the July 19, 2004 order, the Receiver will not pay fees from them. However, if those fees are found to be Sentinel fees payable to Sentinel, pursuant to that same order, those funds will be used to pay Sentinel receivership fees and expenses.<sup>20</sup> But, discovery and an evidentiary hearing are simply not necessary, and it would tax the finite resources of the Sentinel receivership to have to engage in such.

As a final point on the Bates' objections to the approval of fees, the Receiver asserts that the motion for approval of fees should be reconsidered and granted because all that is requested is the approval of the amounts of fees submitted. What the Bates seem to object to is not the

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<sup>20</sup> Again, to the extent that amounts paid to the Sentinel receivership remain at the closing of the Sentinel receivership, those amounts will be distributed to the then remaining claimants of the receivership estate.



approval of the fees, but, rather, the payment of the fees from fiduciary assets, which is a separate issue and which is not occurring.

In sum, for all of these reasons, the Commissioner-in-Possession and the Receiver request that the Court reconsider the matter and grant the Receiver's February 17, 2005 Motion for Approval of Receiver, Outside Counsel and Third-Party Contractors Fees.

#### **V. THE BATES' OBJECTIONS BELIE WHAT THEY AGREE TO IN THE FORT PIERCE, HERNANDO AND TARRANT MOTIONS**

The Receiver urges the Court, in reconsidering its recent order, to be aware of what is not disputed or objected to by the Bates. What is clear is that the Bates do not object to the Sentinel receivership receiving a distribution from the Fort Pierce, Hernando and Tarrant default collateral proceeds of all post- May 18, 2004 charges and fees, except the post- May 18, 2004 interest expense fee (see Section IV b) above). The Receiver so asserts 1) because the Bates' Objections (**Exhibit 14**) make no objection as to payment of non-interest expense components of the post- May 18, 2004 fees and 2) the Bates' agreed to the payment to the Sentinel receivership of identical fees in the Thompson Place default motion that was also heard on February 28, 2005.

Again, to use the Fort Pierce motion to provide a concrete example, Exhibit B to that motion (which is attached hereto as **Exhibit 11**) sets forth \$123,273.18 of post- May 18, 2004 fees on the Fort Pierce default. The interest component that the Bates are objecting to is \$34,017.27, which leaves \$89,255.91 in post- May 18, 2004 fiduciary fees, default administration fees and termination fees to which the Bates have presented no objection.<sup>21</sup>

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<sup>21</sup> Regarding the Hernando motion, \$145,006.18 of post- May 18, 2004 fees are being sought. The interest expense component of that amount, to which the Bates object, is \$94,594.78. Therefore, \$50,411.40 of the post- May 18, 2004 Hernando fees are not being objected to -- these consist of post- May 18, 2004 fiduciary fees, default administration fees and termination fees earned and accrued on the Hernando default. See Exhibit B to the Hernando motion which is attached as **Exhibit 12** to this filing. As to the Tarrant default, \$212, 988.00 of post- May 18, 2004 fees are being sought. The interest expense component of that amount, to which the Bates object, is \$47,385.94 which leaves \$165,602.06 of the post- May 18, 2004 Tarrant fees as not being objected to -- these

Reference immediately above to treatment of a “Thompson Place default” was made as indicating that the Bates have waived objection to the non-interest post- May 18, 2004 components of the fees being sought in the Fort Pierce, Hernando and Tarrant defaults. On February 28, 2005, while the Bates were objecting to the Receiver’s Fort Pierce, Hernando and Tarrant motions as noted herein, they agreed/did not object to the Court approving a final distribution of another default bond -- the Metro-Nashville Thompson Place default. See February 28, 2005 Hearing Transcript at p. 5-6 (attached as **Exhibit 1**). Attached as **Exhibit 16** is the Thompson Place motion, plus exhibits, and as **Exhibit 17** is the Court’s order entered March 1, 2005 approving the Thompson Place distribution.

The Thompson Place motion requested payment to the Sentinel receivership of \$34,425.08 of post- May 18, 2004 fees, including fiduciary fees, default administration fees and termination fees. For the Bates to have agreed to those fees in the Thompson Place matter and then assert that the identical fees were not to be paid to the Sentinel receivership from the Fort Pierce, Hernando and Tarrant defaults would be disingenuous. Accordingly, in reconsidering its recent order, the Court should, at the very least, grant the relief sought by the Receiver to which the Bates have made no objection and to which they, through the Thompson Place motion, have agreed.

Indeed, the Bates 1) agreeing to payment of post- May 18, 2004 default administration fees, fiduciary fees and termination fees in the Thompson Place default, and 2) not objecting to payment of those post- May 18, 2004 fees in Fort Pierce, Hernando and Tarrant reveal the weakness of their objecting to the payment of those pre- May 18, 2004 fees to the Sentinel

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consist of post- May 18, 2004 fiduciary fees, default administration fees, termination fees and legal fees accrued on the Tarrant default. See Exhibit B to Tarrant motion which is attached as **Exhibit 13** to this filing.

receivership. The Bates' argument is necessarily that the Sentinel Receiver should not be paid pre- May 18, 2004 default administration fees or fiduciary fees or termination fees because those fees supposedly represent fiduciary assets. Yet, the Bates do not object to the payment to the Sentinel receivership of those fees that have accrued post- May 18, 2004. Respectfully, the characterization of a default administration fee as a fiduciary asset or as a fee payable to Sentinel is not dependent upon whether that fee was earned and accrued before or after May 18, 2004. The Bates' inconsistency on this point is telling of their motivations -- they do not care about the post- May 18, 2004 fees because there is no tie-in to or activity occurring in the Pooled Fiduciary Account at that time, whereas, they do care about arguing that pre- May 18, 2004 Sentinel fees should be paid to the Pooled Fiduciary Account because it was during the pre- May 18, 2004 timeframe when they were in charge and responsible for the development of the multi-million dollar shortfall in that account. Suffice it to say, the Bates' agreement to have the Thompson Place accrued fees paid to the Sentinel receivership and, thus, the Court's order instructing such (Exhibit 17), are yet other reasons for the Court to reconsider its recent order.

#### **VI. INJUSTICE AND HARDSHIP WILL RESULT IF THE COURT'S RECENT ORDER IS NOT ALTERED OR AMENDED**

The Commissioner-in-Possession and the Receiver assert specific hardship and injustice will result if the current order of the Court setting a June 9, 2005 evidentiary hearing and allowing discovery is not altered or amended. First, in relation to the Receiver's motion for fee approvals, both the pending one filed on February 17, 2005 and those monthly motions that will be filed up until the June hearing, the Receiver will be damaged. It is unlikely that various counsel retained by Sentinel, and located in the different locations where default bond litigation is ongoing, would be willing to continue their efforts on behalf of the Sentinel receivership in pursuit of defaulted bond litigation or other related work when they would not be paid for the

next five to six months. Second, the time and resources that the Sentinel receivership will spend on the discovery and the evidentiary hearing will present a hardship upon the receivership estate's finite resources and would be unjust given the fact that the objections raised by the Bates can be addressed without the need of either discovery or an evidentiary hearing.

A recent filing by the Bates dramatically underscores the hardship that the discovery and an evidentiary hearing allowed by the Court will mean to the Sentinel receivership because, through that filing, it is clear that the Bates plan on abusing the discovery process and the evidentiary hearing allowed by this Court's current order. The discovery and the evidentiary hearing the Court is currently allowing in this matter are supposed to be strictly limited to matters directly related to the specific objections lodged by the Bates, and, as has been examined herein, those objections are fairly narrow and really do not call for factual development in the first place. However, the Commissioner-in-Possession and the Receiver fully expect the Bates to try to abuse the opportunity and attempt to engage in a wide-ranging, broad attempt to discover matters unrelated to their objections and to present at the hearing evidence unrelated to their objections.

The Commissioner-in-Possession's and Receiver's fears in this regard are not speculative or theoretical. On March 4, 2005, the Bates filed, in a case they have brought against the Commissioner-in-Possession in Davidson County, a motion to transfer that action to Lewis County and to consolidate it with this receivership. See Exhibit 18 attached hereto. That Davidson County action is one wherein the Bates are challenging the authority of the Commissioner's actions in taking possession of Sentinel. The issues raised in that Davidson County action have nothing to do with the objections raised by the Bates to the Fort Pierce, Hernando, Tarrant and fee approval motions. But, nevertheless, the Bates, in their recent filing

in Davidson County, inform that court that they believe the testimony to be presented at the June 9, 2005 evidentiary hearing in this case will be essentially the same testimony the Bates plan to present in the Davidson County action. See Exhibit 18 at pp. 1-2. In order for that pronouncement to be true (and that is what the Bates are saying), the Bates must be planning to expand the discovery and evidentiary hearing allowed in this matter well beyond the objections they have made to the Fort Pierce, Hernando, Tarrant and fee approval motions pending before this Court. This, in turn, will mean that the Sentinel receivership can anticipate being embroiled in discovery disputes relating to what is or is not directly related to the objections lodged in this action, objections that do not warrant discovery and an evidentiary hearing in the first place. Certainly, all of this will cause unjustified diversion, delay and expense to the Sentinel receivership and will introduce undue hardship in discharging the core functions of the receivership -- liquidating Sentinel, dealing with claimants and pursuing and collecting assets for the benefit of those claimants. This hardship further counsels toward the Court's reconsideration of its recent order.

#### **VII. THE BATES HAVE QUESTIONABLE STANDING TO PURSUE THEIR OBJECTIONS IN THE FIRST PLACE**

The nature of the Bates' objections are that a disposition of an asset (collateral proceeds from the Fort Pierce, Hernando and Tarrant defaulted bonds) is being done improperly and that a portion of that asset should not be paid to the Sentinel receivership but, rather, should be placed into the Pooled Fiduciary Account to address the multi-million dollar shortfall in that account. Yet, it is clear that the Bates are debtors or potential debtors in relation to the amount of the shortfall in the Pooled Fiduciary Account. Accordingly, under the case In re: Liquidation of United South Bank of Nashville, 718 S.W.2d 251, 254-55 (Tenn. 1986), the Bates lack standing to intervene to object to the disposition of the collateral from the Fort Pierce, Hernando and

Tarrant defaulted bonds. Moreover, it is clear that the Bates hold no stake as a claimant or as a creditor to the Pooled Fiduciary Account; therefore, their standing to complain of a disposition concerning that account is dubious. In the end, and in conjunction with the Court's reconsideration of the recent orders, the Commissioner-in-Possession and the Receiver request the Court to also consider the Bates' questionable standing in raising such objections to begin with.

### **VIII. CONCLUSION**

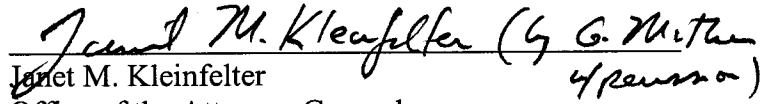
In conclusion, the Commissioner-in-Possession and Receiver request reconsideration and amendment of the Court's order which defers ruling on four motions filed by the Receiver and sets a June 9, 2005 evidentiary hearing and discovery on the Bates' objections to those motions. The issues involved in the Bates' objections have been previously decided through orders of this Court. This issues involved are the subject of admissions by Danny Bates which are contrary to the positions now asserted by the Bates and are also contradicted by the fee schedules published by the Bates. Discovery and an evidentiary hearing on these objections are not needed and are not warranted. The only possible disputes center upon computational issues arising from the Tarrant motion which can be decided through the parties' submissions to the Court. This Court, respectfully, overlooked all of these matters which were apparent from the Court file and/or argument of counsel, and should reconsider its ruling. See Chadwell, 980 S.W.2d at 383. Moreover, reconsideration is warranted due to the hardships identified herein which will be visited upon the Sentinel receivership, particularly in light of the questionable standing that the Bates have to make their objections in the first place.

For these reasons, the Commissioner-in-Possession and Receiver request reconsideration and amendment of the Court's recent order, as requested herein.

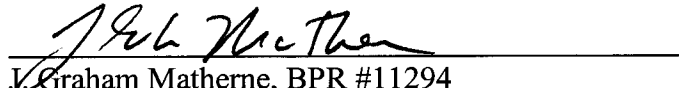
**NOTICE OF SETTING MOTION FOR ORAL ARGUMENT**

**THIS MOTION WILL BE SET FOR ORAL ARGUMENT BEFORE THE COURT  
IN HOHENWALD, LEWIS COUNTY, TENNESSEE ON  
MONDAY, MARCH 28, 2005 AT 9:00 A.M.**

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

This is to certify that on March 14<sup>th</sup>, 2005 a copy of the foregoing Motion has been sent by First Class U.S. Mail, postage paid, to:

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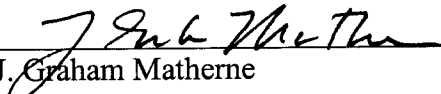
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